

Mark L. Walters (CA Bar No. 160232)
 Andrew J. Doyle (FL Bar. 84948; DC Bar 1022023)
 Environmental Defense Section
 150 M Street NE, Suite 4.214
 Washington D.C. 20004
 Tel: (202) 616-9190
 Fax: (202) 514-8865
 E-mail: mark.walters@usdoj.gov
andrew.doyle@usdoj.gov

Counsel for Defendants

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

NATIONAL PARKS CONSERVATION
 ASSOCIATION, *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
 PROTECTION AGENCY, *et al.*,

Defendants.

Civ. No. 3:22-CV-02302-RS

**DEFENDANTS’ NOTICE OF MOOTNESS
 AND UNOPPOSED REQUEST FOR
 DISMISSAL**

Defendants the United States Environmental Protection Agency and its Administrator, Michael S. Regan (collectively “EPA”), file this Notice of Mootness and Unopposed Request for Dismissal and request that the Court dismiss this action for want of jurisdiction because Plaintiffs’ claims are now moot.

1 1. A federal court lacks jurisdiction “to give opinions upon moot questions or abstract
 2 propositions, or to declare principles or rules of law which cannot affect the matter in issue in the
 3 case before it.” *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *Rosemere*
 4 *Neighborhood Ass’n v. U.S. Env’tl. Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). An
 5 actual controversy must exist at all stages of the review, not just when the complaint is filed.
 6 *Steffel v. Thompson*, 415 U.S. 452, 459 n. 10 (1974). “[N]o justiciable controversy is presented .
 7 . . . when the question sought to be adjudicated has been mooted by subsequent developments.”
 8 *Flast v. Cohen*, 392 U.S. 83, 95 (1968); *see also Smith v. Univ. of Wash., Law School*, 233 F.3d
 9 1188, 1193 (9th Cir. 2000).

10 2. In particular, when an administrative agency has performed the action sought by a plaintiff,
 11 a federal court “lacks the ability to grant effective relief and the claim is moot.” *Pub. Util. Comm’n*
 12 *v. Fed. Energy Regulatory Comm’n*, 100 F.3d 1451, 1458 (9th Cir. 1996). *See, e.g., Ctr. for*
 13 *Biological Diversity v. Norton*, 254 F.3d 833, 837 n. 4 (9th Cir.2001) (stating that where citizen
 14 suit sought to force action regarding the listing of a frog species as threatened or endangered, once
 15 the frog was listed the case became moot). In this case, EPA has performed the precise action
 16 Plaintiffs sought to compel. Therefore, Plaintiffs’ claims are moot and this action should be
 17 dismissed.

18 3. Plaintiffs brought this suit seeking to compel EPA to perform what Plaintiffs alleged to be
 19 a nondiscretionary duty under the Clean Air Act § 110(k)(1)(B). (ECF 1 at 7, 9-10). Specifically,
 20 Plaintiffs sought an order requiring EPA to make a determination as to those states that have failed
 21 to submit satisfactory state implementation plans (known as “SIPs”) under EPA’s Regional Haze
 22 Program for what is known as the “second planning period.” (40 C.F.R. § 51.308(f)). (*Id.* at 9-10).
 23 EPA previously informed Plaintiffs and the Court that it intended to make this determination by
 24 August 31, 2022 (ECF 16 at 2-3; ECF 18 at 1; ECF 22 at 1).

25 4. EPA has now made this determination, and it was published in the Federal Register on
 26 August 30, 2022. *See Finding of Failure to Submit Regional Haze State Implementation Plans for*
 27
 28

the Second Planning Period, 87 Fed. Reg. 52856 (Aug. 30, 2022).¹ EPA has made a determination of and identified those states that have failed to submit complete regional haze SIPs for the second planning period. *Id.* at 52857-58.²

5. Accordingly, EPA has now performed the action sought by Plaintiffs: a determination as to which states failed to submit complete regional haze SIPs for the second planning period. Therefore, this Court “lacks the ability to grant effective relief and the claim is moot.” *Pub. Util. Comm’n*, 100 F.3d at 1458. Plaintiffs’ claims should be dismissed.

6. The undersigned counsel for EPA has contacted counsel for Plaintiffs who indicated that Plaintiffs do not oppose the dismissal requested by EPA.

Therefore, because Plaintiffs’ claims are now moot, and there is no longer any live case or controversy, Defendants respectfully request that this Court dismiss all Plaintiffs’ claims as moot.

Respectfully submitted,

Date: August 31, 2022

s/ Mark L. Walters

MARK L. WALTERS

ANDREW J. DOYLE

U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

150 M Street NE, Suite 4.214

Washington D.C. 20002-3388

mark.walters@usdoj.gov

andrew.doyle@usdoj.gov

Telephone (202) 616-9190

Facsimile (202) 514-8865

¹ <https://www.govinfo.gov/content/pkg/FR-2022-08-30/pdf/2022-18678.pdf>

² Some states have submitted their SIPs since Plaintiffs filed their Complaint. The number of states that failed to submit complete SIPs is now 15.

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Plaintiffs' counsel regarding the dismissal of Plaintiffs' claims as moot and have been advised that Plaintiffs do not oppose the dismissal requested by Defendants.

s/ Mark L. Walters

MARK L. WALTERS

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2022, a true and correct copy of the foregoing document was filed electronically with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Mark L. Walters

MARK L. WALTERS